STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

Appeal from the Michigan Court of Appeals
William B. Murphy, Patrick M. Meter and Deborah A. Servitto

SBC HEALTH MIDWEST, INC,

Petitioner/Appellee,

v

CITY OF KENTWOOD,

Respondent/Appellant.

Supreme Court No. 151524

Court of Appeals No. 319428

MTT Docket No. 416230

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BRIEF OF SBC HEALTH MIDWEST INC. OPPOSING THE CITY OF KENTWOOD'S APPLICATION FOR LEAVE TO APPEAL

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SBC answers "No."

City of Kentwood answers "Yes."

The Court of Appeals did not address this question.

The Tax Tribunal did not address this question.

2. Article 9, § 4 of the Michigan Constitution states: "[p]roperty owned and occupied by non-profit religious or educational organizations and used exclusively for religious or educational purposes, as defined by law, shall be exempt from real and personal property taxes." Even assuming *arguendo*, that "nonprofit" modifies "educational," this language clearly does not prohibit the Legislature from exempting for-profit educational institutions. Given the foregoing, is the constitutional issue raised in the Application, one that: involves an issue of

significant public interest, legal principles of major significance to the state's jurisprudence, or otherwise warrants this Court's granting the Application?

SBC answers "No."

City of Kentwood answers "Yes."

The Court of Appeals did not address this question.

The Tax Tribunal did not address this question.

3. The Tax Tribunal and the Court of Appeals decided this case based only on the legal issue of whether a for-profit educational institution could qualify for property tax exemption under § 9(1)(a). Given that neither the Tribunal, nor the Court of Appeals, made any findings about whether SBC qualifies as an educational institution, should this Court grant the Application in order to determine whether SBC is an educational institution under § 9(1)(a)?

SBC answers "No."

City of Kentwood answers "Yes."

The Court of Appeals did not address this question.

The Tax Tribunal did not address this question.

COUNTER STATEMENT OF THE MATERIAL PROCEEDINGS AND FACTS

With the addition of a few comments, the Statement of Facts of Respondent/Appellant City of Kentwood (the "City") can be accepted because it confirms: i) the Application for Leave to Appeal (the "Application") does not involve any factual disputes; and ii) at issue is whether this Court should grant leave to appeal, where the Opinion of the Court of Appeals merely enforced the unambiguous language of § 9(1)(a), which language does not include the word "nonprofit" or in any other way require an educational institution to be a nonprofit. Indeed, the key statutory language simply exempts, "(t)he personal property of charitable, educational, and scientific institutions. . . . " This crystal clear language was properly of paramount importance in the Court of Appeals' March 19, 2015 Opinion, attached as Exhibit 1 (hereinafter the "Opinion").

The Application, in part, requests that this Court grant the Application and determine whether SBC, which is a for-profit college, is an educational institution under § 9(1)(a). Accordingly, it is especially noteworthy that neither the Tax Tribunal (the "Tribunal"), nor the Court of Appeals has made any determination about whether SBC is an educational institution under § 9(1)(a).[1] This is why the Court of Appeals remanded this case to the Tribunal for that to be determined.

[1] While not specifically mentioned in the Stipulation, the State's on-line corporate records confirm that Sanford-Brown College Grand Rapids is an assumed name for SBC.

INTRODUCTION AND ABSENCE OF GROUNDS FOR REVIEW

In § 9(1)(a)'s unambiguous language, the Act exempts from property taxation "(t)he personal property of charitable, educational, and scientific institutions. . . . " MCL 211.9(1)(a). The word "nonprofit" does not appear in the exemption contained in § 9(1)(a), nor has it ever appeared in that section or in that section's predecessors, which have been in effect for over 100 years. A separate exemption, contained in a different part of the GPTA that primarily addresses real property tax exemptions, MCL 211.7n ("§ 7n"), provides in part for exemption of the "(r)eal estate or personal property owned and occupied by **nonprofit theater**, library, educational, or scientific institutions . . . with the buildings and other property thereon while occupied by them solely for the purposes for which the institutions were incorporated . . . " (emphasis added).[2] The City claims that the Court of Appeals erred when it applied § 9(1)(a)'s actual, clear language and did not take the word "nonprofit" from § 7n and graft it into § 9(1)(a).

To merit the granting of leave, an application must satisfy the grounds in MCR 7.302(B). Indisputably, the Application does not and cannot do this.

The Application claims that the Court of Appeals decision below is "clearly erroneous and conflicts with another decision of the Supreme Court, specifically *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006)." Application at vi. The Court of Appeals decision below, however, is not erroneous and in no way conflicts with this Court's decision in *Wexford*. In *Wexford*, this Court construed a tax exemption granted to **charitable** entities and concluded that **charitable** entities must be nonprofit. But there is no language in either *Wexford* or in § 9(1)(a) that requires educational entities to be nonprofit.

[2] As described below, it was in 1974 when the Legislature added two words, "nonprofit theater," to § 7n. This is very different from an amendment where the Legislature simply adds the word "nonprofit" as an adjective that modifies multiple potential exemption claimants.

The Application says, on page vii, that the decision below will cause "material injustice" by "extending a property tax exemption to a for-profit entity . . . contrary to the plain language of [§ 7n] . . . ." The exemption at issue in this case, however, is in § 9(1)(a), not § 7n, and § 9(1)(a) does not contain any requirement that the entity claiming the exemption be a nonprofit entity. Applying a statute according to its plain language will not cause any "material injustice." On the other hand, grafting language from one statutory provision to change the meaning of another provision that is clear, as the Application advocates, is the type of mischief that would cause material injustice.

Page vii of the Application states: "Given the frequency with which property tax exemption cases for personal property appear before local taxing jurisdictions, the Tribunal, the Court of Appeals, and this Court, it is clear that this issue has significant public interest, invokes legal principles of major significance to the state's jurisprudence, and is nearly certain to recur." Nothing could be further from the truth. The Opinion simply applied the language of § 9(1)(a) according to its unambiguous language, and did not add to the statute requirements the Legislature had not enacted. Over many decades, the Legislature has amended § 9(1)(a) and its predecessors innumerable times, yet it has never seen fit to add a requirement that the educational entity seeking the exemption be a nonprofit entity

Furthermore, the City's claim that the issue is likely to frequently recur is dreadfully wrong. The issue presented in this case – whether a for-profit educational institution can claim a personal property tax exemption – rarely arises. The Application, p 19, found it "quite revealing" that SBC could find only two appellate decisions confirming that a for-profit educational institution could obtain property tax exemption; *Detroit v Detroit Commercial College*, 322 Mich 142, 151; 33 NW2d 737 (1948), in which this Court observed that in *Webb*

Academy v City of Grand Rapids, 209 Mich 523, 177 NW 290, 293 (1920), the Court had previously recognized that a for-profit educational institution could qualify for the property tax exemption of a predecessor to § 9(1)(a). Yet, the Application misses what may be most important about what this reveals: it has been decades since this issue has been litigated. In summary, the Application does not come close to meeting any of the grounds, in MCR 7.302(B), for granting leave to appeal.

ARGUMENT

I. STANDARD OF REVIEW

The last section of this brief explains why this Court should not grant the Application in order to determine whether SBC qualifies as an educational institution. Excluding that issue, the Opinion's summary of the standard of review applies to the other arguments involved here:

> This Court reviews *de novo* a trial court's decision to grant or deny a motion for summary disposition. *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 202; 731 NW2d 41 (2007). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). In evaluating a motion for summary disposition brought under (C)(10), a reviewing court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996); MCR 2.116(G)(5). If the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* at 362–363. Issues of statutory interpretation are also reviewed de novo. *City of Riverview v Sibley Limestone*, 270 Mich App 627, 630; 716 NW2d 615 (2006).
>
> Decisions from the tax tribunal are reviewed for a misapplication of law or adoption of a wrong legal principle. *Wexford Med Group v City of Cadillac*, 474 Mich 192, 201; 713 NW2d 734 (2006). This Court reviews the tax tribunal's interpretation of a tax statute de novo. *Id.* [*Id*. at 1.]

The Application, p 4, asserts that the Tribunal's decision is entitled to deference.[3] This is untrue. This Court did not defer to the Tribunal in *Wexford*, because the Tribunal "misinterpreted the law" when it erroneously engrafted a nonexistent requirement into an exemption statute. The same is true here, where the Tribunal engrafted a nonexistent requirement into § 9(1)(a).

Furthermore, *In re Complaint of Rovas against SBC Michigan*, 482 Mich 90, 102-103, 108; 754 NW2d 259 (2008), details how the *de novo* review should be conducted and *Rovas*

[3] For convenience, attached in Exhibit 2 are the Tribunal's original Order of October 8, 2013 and the Tribunal's November 15, 2013 Order denying SBC's Motion for Reconsideration.

applies to this Tribunal appeal under *Elm Investment Co v Detroit*, unpublished opinion *per curiam* of the Court of Appeals, issued May 14, 2013 (Docket No. 309738); 2013 WL 2096636, attached hereto as Exhibit 3. In *Rovas*, 482 Mich at 102-103 and 108, this Court explained that the decision being reviewed should receive respectful consideration, but not deference:

> statutory interpretation is a question of law that this Court reviews de novo. Thus, concepts such as 'abuse of discretion' or 'clear error,' . . . simply do not apply to a court's review of an agency's construction of a statute.
>
> * * *
>
> [an] agency's interpretation is entitled to respectful consideration and, if persuasive, should not be overruled without cogent reasons. . . . **But, in the end, the agency's interpretation cannot conflict with the plain meaning of the statute.** [Emphasis added; citations omitted].

Thus, the Tribunal decision is entitled to respectful consideration but cannot be given deference or accepted if it conflicts "with the plain meaning of the statute." *Id.*

II. ARGUMENT SUMMARY

The Opinion is as noncontroversial as the statement that cars are manufactured in Michigan. The part of the General Property Tax Act (the "Act" or the "GPTA") that primarily addresses personal property tax exemptions, MCL 211.9(1)(a) ("§ 9(1)(a)"), exempts "(t)he personal property of charitable, educational, and scientific institutions. . . ." This unambiguous statute does not include the word nonprofit and it does not require the institution to be nonprofit.

This statutory property tax language, which unambiguously exempts educational institutions without requiring them to be nonprofit, has existed for over a century. 1897 CL 3832, pg 1190 in the attached Exhibit 4, **shows that since at least 1897**, the Legislature has provided personal property tax exemption for "(t)he personal property of benevolent, charitable, educational and scientific institutions . . . ." As mentioned above, in *Detroit v Detroit Commercial College*, 322 Mich 142, 33 NW2d 737 (1948), this Court recognized that in *Webb*

Academy v City of Grand Rapids, 209 Mich 523, 177 NW 290, 293 (1920), it had granted exemption to a for-profit educational institution where the exemption statute did not require nonprofit status.

The Opinion simply followed fundamental statutory construction rules by applying the actual terms of the unambiguous § 9(1)(a), instead of unlawfully reading into the statute, and thereby adding, the word nonprofit. Undeniably, the ruling below is lawful under innumerable decisions of this Court, which have held that to effectuate legislative intent, unambiguous statutes are followed as written, without adding words that the Legislature omitted. Opinion, p 3 (quoting *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 58; 642 NW2d 663 (2002)).

Similarly, in following this Court's prior decisions, the Court of Appeals correctly concluded that the doctrine of *in pari materia* was inapplicable because § 9(1)(a) is unambiguous. "'(T)he interpretive aid of the doctrine of *in pari materia* can only be utilized in a situation where the section of the statute under examination is itself ambiguous.' *Tyler v Livonia Pub Sch*, 459 Mich 382, 392; 590 NW2d 560 (1999), citing *Voorhies v Faust*, 220 Mich 155, 157; 189 NW 1006 (1922)." Opinion, p 3. Incredibly, the Application fails to even mention these dispositive principles and authorities. Yet, if ever there were a case where these authorities should be followed, it is this one because *in pari materia* would be used to add a statutory requirement the Legislature has chosen not to enact in over a century.

Wexford Medical Group v Cadillac, 474 Mich 192, on which the Application heavily relies, confirms that it would be improper to engraft the word nonprofit into § 9(1)(a). In *Wexford*, a nonprofit health care provider claimed exemption as a charitable institution. That *Wexford* followed precedent and stated that a charitable institution should be nonprofit, is unremarkable and has no bearing on this case's educational institution exemption claim.

However, *Wexford's* key holding is that it was reversible error to engraft "a nonexistent threshold of charitable activity" into a GPTA exemption statute. This Court's compelling logic from *Wexford* applies here: "Had the Legislature wanted such a threshold, it could have easily included one." *Id.*, p 221. Here, had the Legislature wanted to limit exemption to nonprofit educational institutions, it would have added the word nonprofit to § 9(1)(a). Thus, this Court should deny the Application under *Wexford*.

The foregoing points alone should be dispositive and result in the Application's denial. Thus, while unnecessary to discredit the Application, it is noteworthy that the Application is also fatally flawed in missing two other related concepts: 1) while the Application accurately reports that MCL 211.7z includes the words "nonprofit educational institution," this only confirms that the Legislature is fully capable of including the word "nonprofit" when it intends to require nonprofit status; and 2) statutes such as § 7n, which the Application claims conflict with and need to be harmonized with § 9(1)(a), are simply alternative exemption provisions that are not mutually exclusive. As the Court of Appeals correctly concluded, even if § 7n applied to SBC's exemption claim, which is doubtful given § 7n's specific language, "the most that can be said is that (SBC) would not qualify for an exemption under MCL 211.7n. This does not result in (SBC) being deprived of a tax exemption under MCL 211.9(1)(a) if it otherwise applies." Opinion at 3.

The Court of Appeals previously had adopted this reasoning in *Children's Hosp of Michigan v Commerce Twp*, unpublished opinion *per curiam* of the Court of Appeals, issued April 21, 1998 (Docket Nos. 201864 and 201865), attached as Exhibit 5. In *Children's Hospital*, the Court explained that an exemption claimant could qualify for one of the Act's exemptions, even if it did not satisfy a different exemption. **Critically**, **neither § 7n, nor any other GPTA**

statute has language such as: "the personal property of a for-profit educational institution shall not be exempt under this Act."

The Application also errs badly in arguing that Article 9, § 4 of the Michigan Constitution limits exemption to nonprofit educational organizations. Even if Article 9, § 4 exempts only nonprofit educational organizations, which is a disputable reading of the language, this provision in no way **prohibits** the Legislature from exempting for-profit educational organizations. Under Article 9, § 3 of the Michigan Constitution, it is for the Legislature to decide whether and to what extent for-profit educational institutions should receive exemption. The decision below wisely, properly and lawfully recognized that and simply applied § 9(1)(a)'s unambiguous language.

Lastly, given that neither the Tribunal, nor the Court of Appeals even tried to determine whether SBC qualifies as an educational institution, this Court should not grant leave in order to make that determination. Clearly, this Court should deny the Application.

III. THIS COURT SHOULD NOT GRANT LEAVE TO APPEAL BECAUSE THE COURT OF APPEALS FOLLOWED FUNDAMENTAL STATUTORY CONSTRUCTION RULES BY APPLYING THE ACTUAL TERMS OF THE UNAMBIGUOUS § 9(1)(a), INSTEAD OF UNLAWFULLY READING INTO THE STATUTE, AND THEREBY ADDING TO THE STATUTE, THE WORD NONPROFIT.

A. By Not Including The Word Nonprofit In § 9(1)(a), The Legislature Has Unambiguously Permitted For-Profit Educational Institutions To Qualify For Exemption.

In the part of the Act that primarily addresses personal property exemptions, § 9(1)(a) clearly exempts the personal property "of charitable, educational, and scientific institutions. . . ." MCL 211.9(1)(a). The language does not include the word nonprofit or in any way require that the institutions be nonprofit. **At least since 1897**, the Legislature has allowed personal property tax exemption for "(t)he personal property of benevolent, charitable, educational and scientific

institutions . . . ." The 1897 version of the statute does not include the word nonprofit or in any other way require the exemption claimant to be nonprofit. 1897 CL 3832, Exhibit 4, p 1190.

Had the Legislature intended § 9(1)(a) to apply only to nonprofit educational institutions, the Legislature would have added the word nonprofit to § 9(1)(a). **Accomplishing this required only a simple one word amendment. No amendment could be simpler. The Legislature has had over a century and numerous opportunities to so amend the statute. Indeed, since 1974 alone, the Legislature has amended § 9 without adding the word nonprofit a dozen times.**[4] The Court of Appeals, pp 3-4, correctly concluded that § 9(1)(a) is unambiguous.

As noted above, *Detroit Commercial College*, 322 Mich 142, recognized that in *Webb Academy*, 209 Mich 523, this Court had granted exemption to a for-profit educational institution where the exemption statute did not require nonprofit status. This confirms that the Opinion is right.

The Application, pp 19-20, argues that *Webb* is factually distinguishable because the school was an educational institution. However, the Application misses the crucial statutory construction lesson: this Court has previously granted exemption to a for-profit educational institution, where the statutory language did not require nonprofit status. Attached, as Exhibit 6, is the statutory exemption language involved in *Webb*, 1915 CL 4001. That statutory language is essentially the same as the controlling language here. Both statutes simply exempt educational institutions without including the word nonprofit or otherwise requiring nonprofit status.

[4] The twelve acts that have amended MCL 211.9 since 1974 are: 1976 PA 270, 1978 PA 54, 1984 PA 206, 1990 PA 317, 1993 PA 273, 1996 PA 582, 2003 PA 140, 2006 PA 550, 2008 PA 334, 2008 PA 337, 2011 PA 289, and 2011 PA 290.

Consequently, *Webb* does verify that the Opinion correctly construed § 9(1)(a). [5]

B. The Court Of Appeals Properly Followed Fundamental Rules Of Statutory Construction By Applying The Actual Unambiguous Terms Of § 9(1)(a).

In enforcing § 9(1)(a)'s unambiguous language, the Opinion followed perhaps the most fundamental and well established rule of statutory construction. As Opinion, p 3, explained:

> MCL 211.9(1)(a) is not ambiguous. Under the most basic rule of statutory construction, then, we read and apply the actual terms of the unambiguous statute, as is our duty. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 58; 642 NW2d 663 (2002). As indicated by our Supreme Court:
>
> > If the statute's language is clear and unambiguous, then we assume that the Legislature intended its plain meaning and the statute is enforced as written. A necessary corollary of these principles is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself. [*Roberts*, 466 Mich at 63].
>
> Applying the unambiguous language of MCL 211.9(1)(a) to the facts at hand, the personal property of petitioner, if it is an *educational* institution incorporated under the laws of this state, is exempted from taxation. The Tax Tribunal erred in holding otherwise.[6]

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[5] The Application, pp 19-20, also makes the feeble claim that since *Webb*, the Michigan Constitution has been amended to prohibit the Legislature from exempting for-profit educational institutions. This claim is fully addressed below. This Court should readily see that Article 9, section 4 of the Michigan Constitution **in no way prohibits** the Legislature from exempting for-profit educational institutions.

[6] When it included "incorporated under the laws of this state," the Opinion was simply parroting the words of § 9(1)(a). In *Wexford*, 474 Mich at 203, n 5, this Court noted that the exemption claimant's state of incorporation is no longer a factor: "The requirement that to be tax-exempt, an institution be incorporated within the state has been found to be unconstitutional. See *American Youth Foundation v Benona Twp*, 37 Mich App 722, 724, 195 NW2d 304 (1972), citing *WHYY v. Glassboro*, 393 US 117, 89 SCt 286, 21 LEd2d 242 (1968)." The City has recognized that SBC's state of incorporation is immaterial. Application, p 6, n 6. The law on this point is well settled, and does not need further attention from this Court.

This critical analysis simply applies fundamental statutory construction principles and is unassailable.[7]

The City essentially claims that this Court added the word nonprofit to § 9(1)(a) in *Wexford*, 474 Mich at 215. This is untrue. In fact, the key holding of *Wexford* repudiates the Application's assertion.

Wexford involved the exemption claim of a nonprofit that owned and operated a health care clinic. The Tribunal and Court of Appeals wrongly denied exemption because they read into the applicable statues a requirement of a certain dollar amount of free health care, which Wexford did not satisfy. After reviewing this Court's prior decisions concerning charitable institution exemption claimants, this Court set forth the requirements to be charitable, including nonprofit status. *Id*. As described in *Wexford*, dating to at least *Auditor General v R B Smith Mem Hosp Ass'n*, 293 Mich 36, 38, 291 NW 213 (1940), a charitable institution was "'any body **not organized for profit**, which has for its purpose the promotion of the general welfare of the public, extending its benefits without discrimination. . . .'" *Wexford*, 474 Mich at 206 (emphasis added). It is understandable that in the cases decided to date, this Court would have concluded that a charitable organization should be a nonprofit.

That this Court has found a charitable institution to be inherently nonprofit, in no way dictates that the Court engraft this nonexistent and limiting nonprofit language into § 9(1)(a). As already described, in *Wexford*, 474 Mich at 221, this Court held that the Tax Tribunal had "misinterpreted the law" when it "erroneously engrafted a nonexistent threshold of charitable

[7] Regarding the Application's strict construction argument: "While tax-exemption statutes are strictly construed in favor of the government, they are to be interpreted according to ordinary rules of statutory construction. *Cowen v Dep't of Treasury*, 204 Mich App 428, 431, 516 NW2d 511 (1994)." *Inter Co-op Council v Tax Tribunal Dept of Treasury*, 257 Mich App 219, 223; 668 NW2d 181 (2003).

activity" into a GPTA exemption statute. This Court's incontestable *Wexford* conclusion applies here: "Had the Legislature wanted such a threshold, it could have easily included one." *Id*. Here, had the Legislature wanted to restrict exemption to nonprofit educational institutions, it would have added the word nonprofit to § 9(1)(a). *Wexford* discredits the Application.

The City also errs in relying on *Kalamazoo Aviation History Museum v City of Kalamazoo*, 131 Mich App 709, 712; 346 NW2d 862 (1984). There, the Court of Appeals held that the nonprofit Kalamazoo museum was an exempt charitable organization, but not an exempt educational institution. The Application relies on the portion of the opinion, 131 Mich App at 712, which states: "Petitioner argued to the Tax Tribunal that it was entitled to be exempt from personal property taxes under MCL § 211.9(a); M.S.A. § 7.9(a), which protects **nonprofit charitable**, educational or scientific institutions." (Emphasis added.) Similar to the mistake the Application makes in construing § 7n, here it reads "nonprofit" as modifying educational. However, a superior reading, which is consistent with § 9(1)(a)'s unambiguous statutory language, is that "nonprofit" only modifies charitable. In any event, the Kalamazoo museum was a nonprofit and the Court of Appeals in no way analyzed, discussed, or determined whether § 9(1)(a) exempted a for-profit educational institution.[8]

C. The Court Of Appeals Correctly Concluded That The Doctrine Of *In Pari Materia* Should Not Be Applied To The Unambiguous § 9(1)(a).

Similarly, the City wrongfully claims that the Court of Appeals erred and created a conflict between § 9(1)(a) and § 7n. First, given that § 9(1)(a) has been as clear as could be for

[8] The City also relies on *Telluride Ass'n Inc v City of Ann Arbor*, unpublished opinion *per curiam* of the Court of Appeals issued July 16, 2013 (Docket Nos. 304735, 305239); 2013 WL 3717798, attached as Exhibit 7. As with the *Kalamazoo Aviation History Museum* case, *Telluride* involved a nonprofit and the Court of Appeals did not address whether a for-profit educational institution could be exempt. Thus, that decision provides no justification for the Court to grant leave here.

over a century, undeniably the Court of Appeals properly followed this Court's rulings in not applying *in pari materia*. As the Opinion, p 3, explained:

> Because the Tax Tribunal and respondent rely so heavily upon MCL 211.7n, we will briefly address this provision. First, MCL 211.7n exempts from taxation real estate or personal property owned and occupied by a nonprofit theater, library, educational, or scientific institution. We note that MCL 211.7n employs the phrase 'owned and occupied' addressing the property subject to taxation, and the tax exemption claimed in the instant matter concerns a personal property exemption. One does not ordinarily envision 'personal property' of the sort being claimed exempt by petitioner here as being 'occupied' or subject to occupation as referenced in MCL 211.7n, lending serious doubt to whether that statute would be at all applicable to the facts at hand.
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> **Next, 'the interpretive aid of the doctrine of *in pari materia* can only be utilized in a situation where the section of the statute under examination is itself ambiguous.' *Tyler v Livonia Pub Sch*, 459 Mich 382, 392; 590 NW2d 560 (1999), citing *Voorhies v Faust*, 220 Mich 155, 157; 189 NW 1006 (1922). As indicated above, MCL 211.9(1)(a) is unambiguous, rendering use of the doctrine of *in pari materia* concerning MCL 211.7n unnecessary.** Thus, even if MCL 211.7n were applicable and required an educational institution to be nonprofit in order to qualify for the tax exemption contained therein, the most that can be said is that petitioner would not qualify for an exemption under MCL 211.7n. This does not result in petitioner being deprived of a tax exemption under MCL 211.9(1)(a) if it otherwise applies. [Emphasis added].[9]

[9] Page 12 of the Application criticizes the Court's construction of the word occupy in § 7n. Pages 13-18 of the Application also devotes much attention to the word occupy. This material is addressed below. What is most important though, is that this Court should not even consider the meaning of occupy in § 7n because under *Tyler* and *Voorhies*, which the Application ignores, the Court of Appeals properly enforced the unambiguous language of § 9(1)(a), rather than unlawfully add "nonprofit" to the statute under *in pari materia*. Furthermore, the Opinion's entire analysis is logical. Sections 9(1)(a) and 7n are different provisions; § 7n is different in referring to property that is occupied (as the Court of Appeals explained), and as more fully addressed below, § 9(1)(a) and § 7n are alternatives. As detailed below, these two sections are not mutually exclusive and an educational institution's personal property can be exempt under § 9(1)(a) regardless whether the property qualifies for exemption under § 7n.

Incredibly, the Application does not even mention, let alone discuss, this Court's decisions in *Tyler* and *Voorhies*, which are dispositive of the Application's *in pari materia* argument.[10]

Moreover, two of the Court of Appeals' decisions that the Application cites on this issue also support the Opinion. In *Basic Property Ins Ass'n v Office of Fin & Ins Regulation*, 288 Mich App 552; 808 NW2d 456 (2010), cited on page 9 of the Application, the Court did not find an irreconcilable conflict between statutes. Indeed, the *Basic Property* Court, 288 Mich App at 560, specifically cautioned **against** adopting the unlawful statutory construction that the Application urges:

> When construing a statute, 'a court should not abandon the canons of common sense.' *Marquis*, 444 Mich at 644, 513 NW2d 799. '**We may not read into the law a requirement that the lawmaking body has seen fit to omit.' *In re Hurd–Marvin Drain*, 331 Mich 504, 509, 50 NW2d 143 (1951). When the Legislature fails to address a concern in the statute with a specific provision, the courts 'cannot insert a provision simply because it would have been wise of the Legislature to do so to effect the statute's purpose.'** *Houghton Lake Area Tourism & Convention Bureau v Wood*, 255 Mich App 127, 142, 662 NW2d 758 (2003). [Emphasis added].

The City's Brief, p 9, also misses the import of *In re Indiana Michigan Power Co*, 297 Mich App 332; 824 NW2d 246 (2012). That decision, 297 Mich App at 345, also cautions against adding language into statutes that the Legislature did not see fit to include, with a virtually identical discussion of the issue as is contained in the *Basic Property* decision. Furthermore, in this 2012 decision the Court noted that, "[a] statutory provision should be viewed as ambiguous **only after all other conventional means of interpretation have been**

[10] The City's ignoring *Tyler* and *Voorhies* should not be rewarded. If the City's reply brief makes any arguments about these decisions, and the City thereby tries to deprive SBC of responding to the City's contentions on this, this Court should refuse to consider any such arguments. Where the Court of Appeals has properly followed two prior decisions of this Court and an application seeking leave ignores said decisions, it is appropriate for this Court to deny the application.

applied and found wanting." *Id*. at 344 (Emphasis added.) Here, the conventional construction of § 9(1)(a) and § 7n is that the two exemption statutes are alternatives and a taxpayer can qualify for exemption under either one.[11]

Indeed, it is beyond reasonable dispute that § 9(1)(a) and § 7n are alternatives. Given this, there is no statutory conflict. There is no need to harmonize statutes. The cases the City cites about avoiding statutory conflicts and harmonizing statutes are inapplicable.[12]

The one case which best shows that § 9(1)(a) and § 7n are alternatives, is *Children's Hosp of Michigan, supra*. As here, in *Children's Hospital* a party claimed that § 9(a) conflicted with one of the provisions of GPTA § 7 statutes. Specifically, the claim was that § 7r (MCL 211.7r) conflicted with § 9(a) (MCL 211.9(a)). The Court of Appeals affirmed exemption under § 9(a) because: i) rather than conflicting, the two statues were simply alternatives so that a taxpayer could "qualify for an exemption under either statute"; and ii) "[n]o statutory provision indicates that a taxpayer may claim an exemption under only one of the provisions of the GPTA. . . ." *Children's Hospital, supra*, p 3.

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[11] In *Wayne Co Chief Executive v Mayor of Detroit*, 211 Mich App 243; 535 NW 2d 199 (1995), cited on page 9 of the Application, the Court of Appeals held that "[w]e disagree that the two statutes are irreconcilable." *Id*. at 247. There, MCL 211.67a(2) applied where the State had acquired title to tax reverted property and MCL 211.40 applied prior thereto. While the Court of Appeals accepted the Circuit Court's use of *in pari materia*, the doctrine was not used to change either of the statutes involved. Furthermore, this Court of Appeals decision does not trump this Court's holding in *Tyler* and *Voorhies*, that *in pari materia* must not be invoked where the statute is unambiguous.

[12] *In pari materia's* purpose is to harmonize statutes. *Clevenger v Allstate Ins Co*, 443 Mich 646, 656; 505 NW2d 553 (1993). As described above, the Court of Appeals decision does this and gives full effect to both § 7n and § 9(1)(a). It is the Application's suggested construction that unlawfully negates § 9(1)(a) by adding a limitation the Legislature never enacted. Furthermore, the City's strained interpretation renders the exemption contained in § 9(1)(a) as coextensive with the exemption contained in § 7n, rendering § 9(1)(a) mere surplusage, which is yet another reason the City's proposed re-write of § 9(1)(a) is wrong. *In re MCI Telecommunications*, 460 Mich 396, 414; 596 NW2d 164 (1999) (a court should avoid a construction of a statute that would render any part of it surplusage or nugatory).

In the Court of Appeals, the City asserted that *Children's Hospital* was distinguishable because: i) the two exemption statutes there were for different types of entities in that § 7r provided exemption for property of hospitals and public health entities and § 9(a) was for charitable entities; and ii) here both § 7n and § 9(1)(a) apply to educational institutions. If the City makes this argument in its reply brief, this Court should reject it because this is a difference that is of no consequence. Critically, § 7n does not say: an educational institution's failure to qualify for exemption under § 7n, precludes exemption under § 9(1)(a). Given this, the reasoning of *Children's Hospital* applies here. SBC believes the Legislature's statutory scheme is logical, but even if what the Legislature has done could be criticized, as described below, such policy determinations are within the province of the Legislature.

The Application also argues on page 12 that the Court of Appeals construction is illogical because for-profits can more easily establish exemption under § 9(1)(a) than nonprofits can under § 7n. Again, there is no justification for this Court to grant leave and reach this issue given that § 9(1)(a) is unambiguous. However, here too the Application is wrong and deserves to be denied:

- As described further below, under Article 9, § 3 of the Michigan Constitution, the Legislature decides what exemption provisions should apply to for-profit educational institutions. Given that § 9(1)(a) applies the same to both nonprofit and for-profit educational institutions, it is not for the judiciary to nullify what the Legislature has done in § 9(1)(a), regardless of what the Legislature has provided for in § 7n.
- To the extent that the Application claims there is a disconnect between § 9(1)(a) and § 7n, it merely corroborates that the City has misconstrued § 7n. In 1974, the

Legislature did not add the single word "nonprofit" to § 7n. Instead, as proven by comparing Public Act 189 of 1971 and Public Act 358 of 1974 (attached as Exhibit 8) , the Legislature added two words, "nonprofit theater," which was done in response to concerns about the taxation of such theaters. See Exhibit 9, Senate Legislative Analysis, SB 58, November 25, 1974. Thus, the Legislature did not intend the word "nonprofit" to modify the word educational in § 7n.[13]

Finally, with respect to *in pari materia*, pages 13-18 of the Application travel far and wide, the equivalent of an argument light year, discussing the word "occupy" in § 7n. Yet, SBC has not sought exemption per § 7n. The Opinion properly enforced the unambiguous language of § 9(1)(a), making the construction of § 7n immaterial.

IV. THIS COURT SHOULD NOT GRANT LEAVE TO APPEAL BECAUSE THE STATUTE INVOLVED IS CLEARLY CONSTITUTIONAL.

Article 9, § 4 of the Michigan Constitution states: "[p]roperty owned and occupied by non-profit religious or educational organizations and used exclusively for religious or educational purposes, as defined by law, shall be exempt from real and personal property taxes." The Application, pp 18-20, claims that article 9, § 4 permits exemption **only** for nonprofit educational organizations and that the Legislature's grant of a tax exemption to for-profit educational institutions would impermissibly conflict with the Constitution. The Application reads article 9, § 4 as if it includes the underlined language that has been added in the following:

[13] In its reply brief, the City may claim that under rules of grammar and precedent, the word "nonprofit" in § 7n must be read as modifying not only "theater," but also "library, educational, (and) scientific institutions." Had the 1974 amendment to § 7n only added the word "nonprofit," the City's construction would be reasonable, though it still would not warrant granting the Application because § 9(1)(a) is unambiguous. However, and this is necessary to correctly construe § 7n: in 1974 the Legislature did not add "nonprofit," it added the words "nonprofit theater" at a time when it was addressing the taxation of nonprofit theaters.

> Property owned and occupied by non-profit religious or **non-profit** educational organizations and used exclusively for religious or educational purposes, as defined by law, shall be exempt from real and personal property taxes **and for-profit educational organizations may not be granted exemption**.

However, these underlined words are not in article 9, § 4.

Critically, assume *arguendo,* that article 9, § 4 grants exemption to nonprofit educational organizations and not to for-profit educational organizations. **Even then, article 9, § 4 does not bar the Legislature from granting exemption to for-profit educational organizations.** Adding such a nonexistent limitation would be extremely erroneous. Thus, there is no conflict between article 9, § 4 and § 9(1)(a).[14]

The Michigan Court of Appeals has recognized that the Michigan Constitution gives the Legislature virtually plenary power to enact tax exemptions, subject only to a rational-basis review. See, e.g., *Ann Arbor v National Center for Mfg Sciences Inc*, 204 Mich App 303, 306-307; 514 NW2d 224 (1994); *Taylor Commons v City of Taylor*, 249 Mich App 619, 627-628; 644 NW2d 773 (2002).[15] Thus, the Legislature has the Constitutional authority to exempt for-

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[14] The Application, p 19, seems to suggest that *Charter Dev Co LLC v Twp of York*, 19 MTT 588 (Docket No. 30487), issued April 8, 2011 (attached as Exhibit 10), held that article 9, § 4 prohibits the Legislature from exempting for-profit educational institutions. This is untrue. Instead, the Tribunal simply denied an exemption claim under MCL 211.7z, where a for-profit landlord leased property to another for-profit, which in turn leased to a public school academy. The taxpayer apparently contended that article 9, § 4 somehow supported the MCL 211.7z exemption claim. The Tribunal correctly decided that article 9, § 4 did not support the exemption claim of the for-profit entity. Again, even assuming *arguendo* that article 9, § 4 does not exempt for-profit entities, it does not prohibit the Legislature from granting such exemptions. **Last but not least, since the Tribunal's 2011 *Charter Dev* decision, the Legislature has exempted from school operating millage and the state education tax, "property occupied by a public school academy and used exclusively for educational purposes . . ." without requiring that the property owner be a nonprofit entity! MCL 380.503(9).** (Emphasis added.) This is another instance showing that with respect to property used for educational purposes, at times the Legislature will provide tax exemption, even if it benefits for-profit entities.

[15] Article 9, § 3 of the Michigan Constitution states: "The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property **not exempt by law**

profit educational institutions, it has lawfully done so in § 9(1)(a) and this Court should deny the Application.

V. THIS COURT SHOULD NOT GRANT THE APPLICATION IN ORDER TO DETERMINE WHETHER SBC IS AN EDUCATIONAL INSTITUTION WHERE NO FACTUAL FINDINGS ON THIS ISSUE WERE MADE BELOW.

The Application argues that the Court should resolve this matter by making factual findings, even though no factual findings have yet been made by either the Tax Tribunal or the Court of Appeals. The City apparently believes the highest appellate court in the State has nothing better to do than to decide property tax exemption cases. This Court, however, almost never engages in such factual findings, especially when the facts and their implications are disputed.[16] Further, to SBC's knowledge, this Court has never engaged in such fact finding in a matter involving property taxes, an area of law for which the Legislature established the Tribunal to make such findings. See MCL 205.731. The City's extraordinary and perhaps unprecedented request, that this Court decide this case in the first instance, is at odds with both the Legislature's jurisdictional grant to the Tribunal and this Court's past handling of property tax appeals.

The Court should also be cognizant that no factual hearing has been held and the Tribunal made no factual determinations. SBC moved for summary disposition and the City filed a brief

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except for taxes levied for school operating purposes." (Emphasis added.) Another instance of the Legislature's providing exemption for other for-profit entities is GPTA § 7ff, MCL 211.7ff. Under that section, the real property, and generally, the personal property, of for-profit entities are almost completely exempt if they are located in a Renaissance Zone.

[16] It is clear that the Parties disagree vehemently about the record and the implications of the record. See attached Exhibit 11, Stipulation filed in the Tribunal, and Exhibit 12, Transcript of Tribunal oral argument on SBC's motion for summary disposition, including Transcript, at 3 lines 15-18 and at 10 lines 3-12. The Stipulation filed in the Tribunal plainly shows that SBC is a degree-conferring college. Thus, SBC believes: i) on remand it should prevail on its dispositive motion; and ii) even if it does not, it ultimately will be able to provide the Tribunal with evidence proving it is an educational institution under § 9(1)(a). Of course before this matter is resolved, the Tribunal may need to make nuanced findings based on disputed facts.

opposing SBC's Motion. Under the Tribunal's rules, SBC was prevented from filing a reply brief to respond to the City's response. See Tax Tribunal Rule 225(6), Mich Admin Code, R 792.10225(6) (providing that "Pleading on motions shall be limited to the motion and a brief in support of the motion and a single response to the motion and a brief in support of the response"). The Tribunal: i) only held that, as a matter of law, SBC could not qualify for exemption under § 9(1)(a) because SBC was a for-profit entity; and ii) granted summary disposition to the City pursuant to MCR 2.116(I)(2). As the Tribunal stated on page 11 of its October 8, 2013 Final Opinion and Judgment:

> Given the above, the Tribunal finds that Petitioner's personal property is not entitled to an exemption under MCL 211.9(1)(a) and 211.7n, as Petitioner is not a nonprofit education institution, as required by the controlling statute and the Michigan Constitution. **The Tribunal does not find it necessary to consider the remaining arguments relating to whether Petitioner is an 'educational' institution, as Petitioner's status as a for-profit entity would prohibit it from receiving the exemption regardless of whether it met the test for an educational institution.** [Emphasis added].

The City claims on page 22 of its Application that "[t]he record is complete and Petitioner should not be permitted to bolster the record on remand having now had the benefit of the City's objections in this matter." The City's claim is untrue. **The record is not complete as SBC has not had an opportunity to submit facts to contest the City's assertions.**[17] Under proper motion practice, the City could have moved for summary disposition and made its allegations that SBC was not an educational institution. SBC would then have had both the opportunity and burden of presenting evidence refuting that contention. See, e.g., *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). Only then would SBC have had the "benefit of the City's objections in this matter." The City, however, never filed its own motion

[17] While the Tribunal held oral argument on SBC's motion for summary disposition, the hearing on the motion was not an evidentiary hearing.

for summary disposition and its contention that SBC is not an educational institution was made in its Response to SBC's Motion for Summary Disposition, to which SBC was precluded from replying. Thus, SBC has not had an opportunity to fully develop the record on this issue and the record is not complete. Indeed, perhaps the City's plea is not predicated upon the fact that the record is complete, but is instead predicated upon the City's fear that, if the record were completed, SBC would prevail.

CONCLUSION AND RELIEF REQUESTED

For the reasons set forth above, this Court should deny the Application. SBC requests that the Court do so.

Respectfully submitted,
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